

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BECKLEY

CLAYTON LILLY,

Plaintiff,

v.

CIVIL ACTION NO. 5:04-1032

TROY WILLIAMSON, et al.,

Defendants.

JUDGMENT ORDER

By Standing Order entered on July 21, 2004, and filed in this case on September 22, 2004, this matter was referred to United States Magistrate Judge R. Clarke VanDervort. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Standing Order directs Magistrate Judge VanDervort to submit proposed findings and recommendation concerning the disposition of this matter. Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation on August 31, 2005. The magistrate judge made the following recommendations: (1) that the court confirm and accept the magistrate judge's findings, (2) that the court deny defendants' motion to dismiss, or in the alternative, motion for summary judgment (Docket No. 24) with respect to the issue of exhaustion of administrative remedies, (3) that the court grant defendant's motion (Docket No. 24) in all other respects, (4) that the court deny plaintiff's motion to expedite or for injunctive relief

(Docket No. 30), and (5) that the court dismiss this case with prejudice and remove it from the court's docket.

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's Proposed Findings and Recommendation. The failure of any party to file objections within the appropriate time frame constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985).

Plaintiff filed his objections on September 13, 2005. The court has conducted a de novo review of the record as to all of the objections. For reasons to be discussed in a memorandum opinion to be filed forthwith, the court OVERRULES the plaintiff's objections. The court now (1) CONFIRMS and ACCEPTS the magistrate judge's findings, (2) DENIES defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (Docket No. 24) with respect to the issue of exhaustion of administrative remedies, (3) GRANTS defendants' motion (Docket No. 24) in all other respects, (4) DENIES plaintiff's Motion to Expedite or for Injunctive Relief (Docket No. 30), (5) DISMISSES this case with prejudice, and (6) ORDERS the Clerk to remove it from the court's active docket.

The Clerk is directed to forward a copy of this Order to the plaintiff, pro se, and to all counsel of record.

IT IS SO ORDERED this 21st day of September, 2005.

ENTER:

A handwritten signature in cursive script, reading "David A. Faber", is written over a horizontal line.

David A. Faber  
Chief Judge